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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,071	06/14/2006	Daniel N. Bauer	CH920030035US1	5849
54856	7590	11/25/2008		
LOUIS PAUL HERZBERG 3 CLOVERDALE LANE MONSEY, NY 10952			EXAMINER BENOIT, ESTHER	
			ART UNIT 2442	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,071	<b>Applicant(s)</b> BAUER ET AL.	
	<b>Examiner</b> ESTHER BENOIT	<b>Art Unit</b> 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 1-30 are pending in this application. Claims 29-30 have been amended. It is noted that copies of documents discussed in the specification, including those incorporated by reference, have not been provided to the USPTO.

### ***Response to Arguments***

2. Applicant's arguments, filed 09/02/2008, with respect to the rejection of claim(s) 1 under 102(b) have been fully considered and are persuasive. However, upon further consideration, a new ground(s) of rejection is made in view of Waldvogel et al. (*Secure Distributed Document Storage through Peer-to-Peer Technology*, January 2003).

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification lacks antecedent basis for the control unit of claim 24.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23, 26, and 30 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter. With respect to claims 23 and 26, a “computer program element” is directed to software and thus is not patentable subject matter. With respect to claim 30, only software can be stored on a computer program product. Claims directed to software that are not embodied on a statutory computer readable media are not patentable.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 1-8, 14-16, and 18-30 are rejected under 35 U.S.C. 102(a) as being anticipated by Waldvogel et al. (*Secure Distributed Document Storage through Peer-to-Peer Technology*, January 2003).

With respect to claim 1, Waldvogel discloses selecting at least one replica number, (pg. 12, “Local Replica Access”) by applying a given function, requiring the replica number and a document identifier as input: determining at least one entity identifier, each entity identifier representing an entity in the network that might provide

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the replica, (pg. 13, "Addressable Replicas") addressing a document related request to at least one of the identified entities (pg. 13, "Addressable Replicas")

With respect to claim 2, Waldvogel discloses selecting  $k = N$  replica numbers, wherein  $N$  is a maximum number for replicas, by applying the given function  $k$  times: determining  $k$  entity identifiers (pg. 13)

With respect to claim 3, Waldvogel discloses selecting  $k$  replica numbers from a maximum number of  $N$  replicas with  $k < N$ , by applying the given function  $k$  times, and determining  $k$  entity identifiers (pg. 13 and pg. 19)

With respect to claim 4, Waldvogel discloses wherein  $k \leq 5$  (pg. 13 and pg. 19)

With respect to claim 5, Waldvogel discloses wherein  $k = 1$  (pg. 13 and pg. 19)

With respect to claim 6, Waldvogel discloses addressing the document related request to all identified entities (pg. 13)

With respect to claim 7, Waldvogel discloses addressing the document related request to only selected ones of the identified entities (pg. 13)

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With respect to claim 8, Waldvogel discloses addressing the document related request only to one entity selected from the identified entities (pg. 13)

With respect to claim 9, Waldvogel discloses calculating a cost function for each of the k entities, the cost function providing a cost value as result which indicates a cost to address the relevant entity (pg. 19)

With respect to claim 10, Waldvogel discloses calculating a cost function for each of the k entities, the cost function providing a cost value as result which indicates a cost to address the relevant entity, wherein each entity to be addressed is selected from the identified entities due to an associated cost value (pg. 19)

With respect to claim 11, Waldvogel discloses wherein addressed consist of at least one entity showing a lowest cost value/s (pg. 19)

With respect to claim 12, Waldvogel discloses cost values for the addressed entities are derived from communication with these entities (pg. 19)

With respect to claim 13, Waldvogel discloses cost values for the addressed entities are derived from a cost database (pg. 19)

With respect to claim 14, Waldvogel discloses wherein upon receiving a "replica not available" response from each of the addressed entities, another entity is selected from the identified entities for addressing the document related request to (pg. 19)

With respect to claim 15, Waldvogel discloses wherein the other entity is selected from the identified entities by choosing an entity with an associated replica number that is lower than the replica number associated to the entity/entities the previous request was addressed to (pg. 13)

With respect to claim 16, Waldvogel discloses wherein upon any indication from the addressed entity/entities that neither the replica is not available nor the replica is available there, another entity is selected from the identified entities for addressing the document related request to (pg. 19)

With respect to claim 17, Waldvogel discloses wherein the other entity is selected due to an associated cost value (pg. 19)

With respect to claim 18, Waldvogel discloses selecting from the identified entities at least one most preferred entity, and addressing the document related request to each most preferred entity (pg. 13)

With respect to claim 19, Waldvogel discloses wherein each most preferred entity is selected according to said each most preferred entity's distance from the retrieving entity (pg. 19)

With respect to claim 20, Waldvogel discloses wherein the distance of an entity is derived from the associated entity identifier (pg. 19)

With respect to claim 21, Waldvogel discloses wherein upon receiving a "replica not available" message from the addressed entity, at least one other entity is selected from a set of identified entities as a second best preferred entity for addressing the document related request to, (pg. 19) this set of identified entities being limited to entities with corresponding replica numbers lower than the replica number that is associated to the most preferred entity identifier (pg. 19)

With respect to claim 22, Waldvogel discloses wherein the second preferred entity is selected from the set of identified entities according to its distance from the retrieving entity, wherein the closest distance is derived from the associated entity identifier (pg. 19)

With respect to claim 23, Waldvogel discloses a computer program element comprising computer program code means which, when loaded in a processor unit of a

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computing entity, configures the processor unit to perform a method as claimed in any one of the preceding claims (pg. 19)

With respect to claim 24, Waldvogel discloses a computing entity for retrieving a replica of an electronic document in a computer network, comprising a control unit designed to perform a method (pg. 13)

With respect to claim 25, Waldvogel selecting a replica number (pg. 12, "Local Replica Access"), by applying a given function, requiring the replica number and a document identifier as input: determining an entity identifier, the entity identifier representing an entity in the network, (pg. 13, "Addressable Replicas") addressing the identified entity for replica depositing purposes (pg. 13, "Addressable Replicas")

With respect to claim 26, Waldvogel discloses a computer program element comprising computer program code means which, when loaded in a processor unit of a computing entity, configures the processor unit to perform a method (pg. 13)

With respect to claim 27, Waldvogel discloses a computing entity for depositing a replica of an electronic document in a computer network, comprising a control unit designed to perform a method (pg. 13)

With respect to claim 28, Waldvogel discloses an article of manufacture comprising a computer usable medium having computer readable program code means embodied therein for causing retrieval of a replica of an electronic document in a computer network, the computer readable program code means in said article of manufacture comprising computer readable program code means for causing a computer to effect the steps (pg. 13)

With respect to claim 29, Waldvogel discloses an apparatus to retrieve a replica of an electronic document in a computer network, comprising means for selecting to select at least one replica number, (pg. 12, "Local Replica Access") means for applying to apply a given function employing the replica number and a document identifier as input, determining at least one entity identifier, each entity identifier representing an entity in the network that might provide the replica, (pg. 13, "Addressable Replicas") means for addressing to address a document related request to at least one of the identified entities (pg. 13, "Addressable Replicas")

With respect to claim 30, Waldvogel discloses a computer program product comprising a physical computer readable medium having computer readable program code means embodied therein for causing retrieval of a replica of an electronic document in a computer network, the computer readable program code means in said computer program product for causing a computer to effect the functions of claim 29 (pg. 13)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B

November 17, 2008

/Andrew Caldwell/

Supervisory Patent Examiner, Art Unit 2442